

Outline of State of Montana's Proposed Compact Provisions

This outline describes the intent behind the State of Montana's response to the CSKT proposed Compact Language, specifically with reference to priorities, deferral periods, corroboration of River Diversion Allowances (RDAs), shared shortages, and adaptive management provisions. The State's response and this outline include areas of agreement with the CSKT proposal in addition to proposed changes. This outline is arranged in the form of a time line, describing how the various provisions mentioned above would be brought to bear on the implementation of the Compact over time. The State's draft Compact language is intended to convey the concepts contained in this outline; the State recognizes, however, that the draft Compact is a work in progress and will require refinement to better reflect the contents of this outline and the terms of settlement ultimately agreed to by the parties.

1. Initially all RDA service areas will be managed as they currently are with respect to in-stream flows and irrigation diversions.
2. Over time, successive service areas will become the object of Operational Improvements and Rehabilitation and Betterment, according to a schedule in an appendix to the Compact that will specify timing of improvements and deadlines for their completion and implementation of Minimum Enforceable Flows (MEFs), RDAs, and Target Instream Flows (TIFs).
3. When a service area becomes the object of Operational Improvements, a deferral period begins. The deferral period is the amount of time necessary to complete Operational Improvements within a service area and reallocate water saved through such improvements to instream flows. The length of the deferral period is unique to each service area and will be specified in the schedule described above.
 - a. During the deferral period, irrigation diversions will be managed as they are currently, except that as Operational Improvements and Rehabilitation and Betterment are put into place, water will be conserved, allowing head-works irrigation diversions to be reduced and in-stream flows to be increased (from Interim Instream Flow values towards the MEFs and TIFs specified in the Compact).
 - b. In the event that there is not enough water to supply both the Instream Flows attained to that date through the application of reallocated water (Interim, Incremental, or fully enforced) and the irrigation diversions called for by current management practices, more water will be made available by recourse to the following management tools, in order:
 - i. Drawing FIIP reservoirs below minimum pool levels;
 - ii. Excess pumping as compared to historic levels; and
 - iii. Access to Flathead System Compact Water.

4. After all Operational improvements have been made, there will be a process to corroborate the adequacy of the RDAs. An adequate RDA is one that produces measured on-farm deliveries that match historic on-farm deliveries that are specified in an appendix to the Compact. RDAs that do not meet these historic on-farm delivery levels will be adjusted to do so.
5. At the end of the deferral period the MEFs, RDAs and TIFs for the service area will become enforceable. Regardless of where the water comes from (natural and regulated flow, normal pumping, savings from OI and R&B), the rights will be satisfied in the following order: MEFs, Minimum Pool levels, RDAs, TIFs.
 - a. If at any point the amount of water available from these sources is less than the amount required for to meet both MEFs and RDAs, more water will be made available by the same process described above, up to the amount necessary to meet MEFs and RDAs.
 - b. If the amount of water available is greater than the amount required to meet MEFs and RDAs, any excess goes to TIFs.
6. If the amount of water available at the end of the deferral period is initially less than the amount required to meet MEFs, Minimum Pool levels, and RDAs, but more water is eventually made available through further R&B, it is used first to offset the excess pumped water described above, and then applied to TIFs after no further pumping is required.
7. If at any point after all Operational and R&B improvements have been made, the available water (from natural and regulated flow and normal pumping) exceeds the total of MEF + Minimum Pool + RDA + TIF, the excess will be split between irrigation diversions and in-stream flow.

The foregoing should provide the guidelines for adaptive management.